IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8010 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KRISHNA BEHARI

Versus

AIR INDIA LTD.

Appearance:

1. Special Civil Application No. 8010 of 2001

MR DF AMIN for Petitioner No. 1

MR NANDISH CHUDGAR for NANAVATI ASSOCIATES for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/09/2004

ORAL JUDGEMENT

In this petition, the petitioner, a retired employee of the respondent Air India Ltd., has sought directions to release the amounts of gratuity, provident fund and leave encashment with interest from 1.11.2000,

till the actual payment thereof. The above prayers have been made by the petitioner on the basis that he had, after working satisfactorily with the respondent, retired on superannuation with effect from 31st October, 2000.

2. Though in the petition the petitioner has prayed for release of the amounts of gratuity, provident fund and leave encashment payable to him, it is jointly stated by the learned Advocates appearing for the parties that during the pendency of the petition, the respondent has already released the amount of gratuity payable to the petitioner, have also released leave encashment benefits and also paid the employee's contribution to the provident fund account. The only question therefore that survives in this petition is with respect to the petitioner's claim regarding employer's contribution to the provident fund.

3. Learned Counsel appearing for the petitioner has submitted that the petitioner having retired from service, it is not possible for the respondent to with-hold any part of the provident fund and the action of the respondent is therefore illegal. He therefore, prays that the respondent be directed to release the remaining amount of the provident fund of the petitioner with interest accumulated thereof. The learned Counsel for the petitioner has also submitted that though the respondent has it's Head Office in Mumbai and the petitioner also retired while employed at Mumbai, by virtue of the fact that the petitioner, after his retirement, now resides at Baroda, this Court has territorial jurisdiction to entertain the present petition.

4. On behalf of the respondent, however, the learned Counsel Mr. Chudgar has submitted that there were certain serious allegations of monetary irregularity having been committed by the petitioner during his service tenure for which the investigation was also entrusted to CBI and therefore, the respondent rightly did not release the employer's contribution towards his provident fund. He particularly relies on Regulation 22 of the Employees' Provident Fund Regulations, 1954 framed by the respondent in consultation with the Central Government. He vehemently opposes the contention of the petitioner that this High Court has territorial jurisdiction to entertain the petition.

5. Since the question of territorial jurisdiction of the High Court has been raised by the respondent, it would be necessary to decide the said question before

examining other issues arising in this petition.

6. In order to decide the issue of territorial jurisdiction, this Court is required to first note the averments made by both sides. In the petition the petitioner has stated that as per the provisions of the Air India Employees' Provident Fund Regulations, 1954 (hereinafter referred to as "the said Regulation"), the petitioner is entitled to receive the provident fund and the action of the respondent in withholding the payment thereof standing in the credit of the petitioner's provident fund account is arbitrary, unjust and illegal. It may however be noted that with respect to the territorial jurisdiction of this High Court, the petitioner has not made any averments in his petition.

6.1 The respondent in the affidavit-in-reply has raised the question of territorial jurisdiction of this High Court. It is specifically averred in paragraph 4.3 of the reply affidavit sworn on 9.1.2002 and filed by the respondent, as under:-

> "4.3 I state and submit that even otherwise, no cause of action, if at all has arisen within the jurisdiction of this Hon'ble Court. The petitioner at the time of his superannuation was working with the respondent Corporation at Mumbai and not within the jurisdiction of this Hon'ble Court. Further, the alleged inaction/action (though not admitted by the respondent Corporation) for which grievance has been made by the petitioner in the present petition, is by the head office of respondent Corporation at Mumbai. Thus, in short, no cause of action has arisen within the jurisdiction of this Hon'ble Court and therefore this Hon'ble Court would not have jurisdiction to entertain the present petition and the petition deserves to be rejected in limine on this ground alone."

6.2 In the rejoinder affidavit filed by the petitioner, the petitioner has tried to meet with the objection of the respondent with respect to the jurisdiction of this High Court. In paragraph 2.3 of the rejoinder, the petitioner has made following averments:-

> "2.3 - With reference to para 4.3 of the reply affidavit, I invite Hon'ble Court's attention to my letter dated 22nd January, 2001 at Annexure "B", page 13 of the petition, addressed to the Managing Director of respondent

company wherein inter-alia I have pointed out that at Mumbai I was occupying the accommodation provided by the company. I say and submit that I own an immovable property at Vadodara in Gujarat State at the place shown in the cause title of the petition since October, 1981 and that on my retirement from the company, I have started residing at the above place since February, 2001 I am receiving my pension from the Life Insurance Corporation of India also at Vadodara. In the record of the respondent company also my permanent address is shown as Vadodara. I am, therefore, a resident of the State of Gujarat and hence, I am entitled to invoke extra-ordinary writ jurisdiction of this Hon'ble Court for enforcement of my fundamental rights."

6.3 Thus, in nutshell, the contention of the respondent is that at the time of his superannuation the petitioner was working with the respondent at Mumbai and not within the jurisdiction of this High Court. It is further stated that the inaction for which the grievance has been made by the petitioner, is by the Head Office of the respondent, which is at Mumbai and that therefore, no part of the cause of action has arisen within the territorial jurisdiction of this High Court. The petitioner however, has tried to meet with these contentions on the ground that he has already pointed out to the respondent that in Mumbai he was occupying the accommodation provided by the respondent. The petitioner has further contended that he is possessing an immovable property in Vadodara and after retirement he has started residing there since February, 2001. He is also receiving pension from Life Insurance Corporation of India at Vadodara and since his permanent residence is at Vadodara, he is entitled to invoke the extra-ordinary jurisdiction of this High Court.

7. In view of the above averments, learned Counsel for the petitioner has contended that the petitioner is entitled to invoke jurisdiction of this High Court. Relying on the decision of the Hon'ble Supreme Court in the case of State of Kerala & ors. Vs. M. Padmanabhan Nair, reported in 1985 (1) SCC 429, he contends that pension and gratuity are not bounty, but are the legal rights of a retired employee. Placing reliance on the decision of M/s. H.S. Shobasing & Sons Vs. Saurashtra Iron Foundry & Steel Works Pvt.Ltd. reported in 9 GLR 932, he contends that the principle of common law rule that debtor must seek creditor is applicable in India also, and the provisions of Section 49 of the Indian

Contract Act does not bar the application of the said principles in India. In support of the said contention, the learned Counsel for the petitioner has also placed reliance on the decisions in Gauri Shankar - Creditor Vs. R.J. DeCruse - Insolvent (AIR 1927 Oudh 22), Maria Munnise Begum Vs. Noore Mohammed Saheb (AIR 1965 A.P. 231), Sri Narain Vs. Jagnnath & anr. (AIR 1917 Allahabad 128), Champaklal Mohanlal & ors. Vs. Neetar Tea Company (AIR 1933 Bombay 179), State of Punjab Vs. A.K. Rally (Engineers) Ltd. (AIR 1964 Calcutta 418), wherein also similar proposition has been laid down by different High Courts.

8. Learned Counsel for the respondent on the other hand, placing reliance on the decisions of the Hon'ble Supreme Court in Union of India & ors Vs. Adani Exports Ltd., reported in AIR 2002 SC 126, and Oil & Natural Gas Commission Vs. Utpalkumar Basu & ors., reported in (1994) 4 SCC 711, contended that this High Court has no territorial jurisdiction to entertain the present petition.

9. Before dealing with the rival contentions and deciding the controversy on hand, one factual aspect of the matter can be noted. By letter dated 1.11.2000, the petitioner had requested the Chairman of the respondent that despite his long service and having superannuated, his retiral dues are held back and he had therefore requested the Chairman to intervene in the matter. It may be noted that this letter was written by the petitioner when he was in Mumbai. Yet another letter dated 22.1.2001 came to be written by the petitioner to the Managing Director of the respondent also from Mumbai, stating that his retiral dues have been held back and if his dues are not settled by 31.1.2001, he will have no accommodation or financial resource to acquire one and he had therefore requested for permission to retain the flat till such time his dues are settled. It is further to be noted that by Registered A.D notice dated 7.1.2001, the Advocate of the petitioner called upon the respondent to clear the outstanding dues. In the said notice also the address of the petitioner was shown that of Mumbai. Subsequently, in August 2001, yet another notice came to be issued by the Advocate of the petitioner. wherein the petitioner's address of Vadodara was mentioned. One may also notice that under Regulation 23(3) of the said Regulations, any person desirous of claiming payment of provident fund has to send an application to the Board or a specified Authority and intimate his option that the payment be made (i) by postal money order at the cost of the payee; or (ii) by crossed cheque sent through post;

or (iii) by deposit in the payee's bank account, if any. Upon a query from the Court whether the petitioner had exercised any such option or had made any application requesting the respondent to send the amount either by cheque or money order at Vadodara, or for a deposit in the petitioner's bank account, learned Counsel for the petitioner fairly conceded that no such application was made. This aspect of the matter may have some bearing on the territorial jurisdiction of this High Court and should not be confused with the entitlement of an employee to receive provident fund amount without having to make an application in this regard, since sub-regulation (1) of Regulation 23 itself requires that when the amount standing to the credit of a member, or the balance thereof after any deduction under Regulation 22, becomes payable, the Board shall close the account of the member and shall give a written notice to the person entitled to receive payment specifying the amount and tendering payment thereof.

10. Having noted the factual position, this Court is now required to advert attention to some of the decisions of the Hon'ble Supreme Court of India on the question of territorial jurisdiction of the High Court to entertain petitions under Article 226 of the Constitution of India.

10.1 In the decision of Oil & Natural Gas Commission Vs. Utpalkumar Basu & ors., reported in (1994) 4 SCC 711, the Hon'ble Supreme Court was pleased to observe that under Artile 226(2) of the Constitution of India, the High Court may exercise its power conferred by Clause (1) if the cause of action, wholly or in part had arisen within the territory over which it exercises its jurisdiction, notwithstanding the seat of such Government or the Authority or the residence of such person is not within those territory. It was further observed that it is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgement in his favour by the Court. It was further observed that therefore in determining the objection of lack of territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words whether High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. In the said decision the Hon'ble Supreme Court having found that mere fact that the petitioner

company has its registered office at Calcutta, had read in Calcutta Newspaper ONGC advertisement inviting tenders at Delhi for work to be executed in Gujarat and in response thereto the petitioner sent its tender to the Delhi address from Calcutta and also made representation from Calcutta against non-consideration of its offer on the ground of its ineligibility because its failure to fulfil the experience criterion, was pleased to hold that these facts would not constitute integral part of the cause of action and the Calcutta High Court therefore, did not have the territorial jurisdiction to entertain the petition.

10.2 In the decision of the Hon'ble Supreme Court in Rajasthan High Court Advocates' Association Vs. Union of India and ors - AIR 2001 (SC) 416, the apex Court was pleased to make following observations:-

"17. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense it means the necessary conditions for the maintenance of the Suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgement of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises. The Chief Justice of the High Court has not been conferred with the legislative competence to define cause of action or to declare where it would be deemed to have arisen so as to lay down artificial or deeming test for determining territorial jurisdiction over an individual case or class of cases. The permanent Bench at Jaipur has been established by the Presidential Order issued under sub-section (2) of Section 51 of the Act. The territorial jurisdiction of the permanent Bench at Jaipur is to be exercised in respect of the cases arising in the specified Districts. Whether the case arises from one of the specified districts or not so as to determine the jurisdictional competence

to hear by reference to territory bifurcated between the principal seat and Bench seat, shall be an issue to be decided in an individual case by the judge or judges hearing the matter if a question may arise in that regard. The impugned explanation appended to the order of the Chief Justice dated 23.12.1976 runs counter to the Presidential order and in a sense it is an inrode into the jurisdiction of the judges hearing a particular case or cases preempting a decision to be given in the facts of individual case whether it can be said to have arisen in the territory of a particular district. The High Court is right in taking the view which it has done."

10.3 In the case of Union of India VS. Adani Exports Ltd. - AIR 2002 p.126, the Hon'ble Supreme Court was pleased to observe that in order to confer jurisdiction of a High Court to entertain a writ petition, or a Special Civil Application, the High Court must be satisfied from the entire facts pleaded on the cause of action that those facts do constitute a cause so as to empower the Court to decide a dispute which has, at least in part, arising within its jurisdiction. In the said decision, in view of the factual background that the petitioner was refused credit of export made by him under the Passbook Scheme, the designated Authority of which was stationed at Madras, export and import of which credited, had to be claimed and made from from Madras, it was found that no part of cause of action had arisen in Ahmedabad and merely by the fact that assessee carries on its business from Ahmedabad or export orders were received and placed from Ahmedabad or that payments were also received at Ahmedabad or non-granting or denial of the credit in the Passbook which will affect the business of the petitioner at Ahmedabad, was not found sufficient facts to give cause of action within the jurisdiction of the Gujarat High Court. In paragraph 13, the Hon'ble Supreme Court was pleased to make following observation:-

"13. Inspite of the above admitted facts, the respondents herein plead that as per the plea raised by them in paragraph 16 of the Special Civil Application, following facts give rise to the cause of action conferring territorial jurisdiction on the Court at Ahmedabad. They are:-

(i) the respondents carry on their business of export and import from Ahmedabad;

(ii) their orders of export and import are placed from and are executed at Ahmedabad;

(iii) documents and payments for export and import are sent/made at Ahmedabad;

(iv) the credit of duty claimed in respect of exports were handled from Ahmedabad since export orders were received at Ahmedabad and payments also received at Ahmedabad;

(v) non-granting and denial of utilisation of the credit in the pass book will affect the business of the respondents at Ahmedabad;

(vi) respondents have executed a bank guarantee through their bankers at Ahmedabad as well as a Bond at Ahmedabad".

In view of this factual background, in paragraph 17 of the said decision, the Hon'ble Court by making above observations was pleased to conclude that facts would not confer territorial jurisdiction on the Courts at Ahmedabad.

10.4 In the decision reported in 2004 AIR SCA 2067 (National Textile Corpn. & ors. Vs. M/s. Haribox Swalram & ors.) the Hon'ble Supreme Court was deciding the question of territorial jurisdiction in view of the factual background that the textile mills were situated at Bombay, order for purchase of cloth was placed by party having business at Calcutta, the supply of cloth was to be made at factory at Bombay. It was held that writ petition by the purchaser against mills maintainable at Bombay and not at Calcutta, and the fact that the petitioner carries on business at Calcutta. or reply by mills to correspondence made was received at Calcutta is not integral part of cause of action and the Calcutta High Court had no jurisdiction to entertain the writ petition. The Hon'ble Supreme Court made following observations in paras 10 and 11.

"10. Under Clause (2) of Article 226 of the Constitutio, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for

the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgement of the Court. To put it in a different way, it is bundle of facts which taken with law applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India Vs. Adani Exports Ltd. AIR 2002 SC 126 in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis of dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. A similar question was examined in State of Rajasthan Vs. M/s. Swaika Properties, AIR 1985 SC 1289. Here certain properties belonging to a company which had its registered office in Calcuttta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The qustion which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52 of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition."

"11. The question of jurisdiction was considered in considerable detail in Oil and Natural Gas Commission Vs. Utpal Kumar Basu, 1994 (4) SCC 711 and it was held that merely because the writ petitioner submitted the tender and made representations from Calcutta in response to an advertisement inviting tenders which were to be considered at New Delhi and the work was to be performed in Hazira (Gujarat) and also received replies to the fax messages at Calcutta, could not constitute facts forming an integral part of cause of action. It was further held that the High Court could not assume jurisdiction on the ground that the writ petitioner resides in or carries on business from a registered office in the State of West Bengal."

Accordingly, the Hon'ble Supreme Court was pleased to conclude that the mere fact that the petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and therefore, Calcutta High Court had no jurisdiction to entertain the writ petition.

10.5 In the decision reported in 2004 SCW 2766 (M/s.Kusum Ingots & Alloys Ltd. Vs. Union of India and anr.), the Hon'ble Supreme Court was pleased to observed as under in paragraphs 6 to 9:-

"6. Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the Judgement of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgement, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily."

"7. Clause (2) of Article 226 of the Constitution of India reads thus:

"(2) The power conferred by clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such persons is not within those territories."

"8. Section 20(c) of the Code of Civil Procedure reads as under:-

"20 OTHER SUITS TO BE INSTITUTED WHERE DEFENDANT RESIDE OR CAUSE OF ACTION ARISES.

Subject to the limitation aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction -

(c) the cause of action, wholly or in part, arises."

"9. Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to a writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) of C.P.C shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts."

It was observed that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter. It was however, further observed that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit and in

appropriate case the Court may refuse to exercise its discretionary jurisdiction by invoking doctrine of forum conveniens.

10.6 In (1996) 1 SCC 558 (State of Gujarat Vs. Savitri Devi) the Hon'ble Supreme Court was deciding the question of jurisdiction of Haryana Court to entertain a suit filed by a party claiming family pension consequent to the death of a constable who was working in Gujarat State Reserve Police. It was held that the appellants' offices are situated in Gujarat State and no part of cause of action had arisen in Haryana and that therefore, the decree of the trial court lacks total jurisdiction. In paragraph 3 of the said decision following observations have been made.

> "3. Two questions have been raised in this appeal, First relates to the jurisdiction and the second to the entitlement of the respondent to pension. It is an admitted fact that the deceased Lal Singh served as a constable in the State of Gujarat. Section 20, Code of Civil Procedure, 1908 envisages institution of the suit in the court within whose jurisdiction the defendants ordinarily reside etc. The appellants' offices are situated in Gujarat State and no part of the cause of action had arisen in Haryana. Neither counsel can waive the jurisdiction nor consent to confer jurisdiction on courts situated in the State of Haryana. Therefore, none of the courts in Haryana has any territorial jurisdiction to entertain the suit for the payment of pension by the State of Gujarat. Under these circumstances, the decree of the trial court is one of total lack of jurisdiction. It is a nullity"

11. Keeping the above judicial pronouncements in mind and reverting back to the facts of the present case, I find that the petitioner was working with the respondent and was stationed at Mumbai at the time of his retirement. The Head office of the respondent is at Mumbai. The petitioner, after his retirement had also made correspondence with the respondent for releasing of his retiral dues, from Mumbai. His Advocate, who was also having his office at Mumbai had also sent a legal notice to the respondent and the address of the petitioner was shown of that of Mumbai. It is true that subsequently one legal notice did come to be issued to the respondent on behalf of the petitioner, wherein the address of the petitioner was shown to be at Baroda. As

noted earlier, under sub-regulation (3) of Regulation 23 of the said Regulations, the petitioner could have required the respondent to pay to him the provident fund dues by postal money order, or by cross cheque or by depositing it in his bank account. If any such application was made calling upon the respondent to pay the amounts in question to the petitioner at Baroda or to be remitted in his bank account in Baroda, perhaps the petitioner would have been correct in contending that a part of cause of action has arisen within the territorial jurisdiction of this High Court. Admittedly no such application was made by the petitioner. Simply because the petitioner now resides at Baroda, in my view, would not give territorial jurisdiction to this High Court to entertain the present petition, especially in view of the observations of the Hon'ble Supreme Court in the case of Union of India Vs. Adani Exports (supra) and State of Gujarat Vs. Savitri Devi (supra). In the peculiar facts of this case, I find that the principle of debtor must find creditor would apply. In the conclusion therefore I find that the petitioner has not made out any case to suggest that even a part of cause of action has arisen within the jurisdiction of this High Court and this High Court therefore lacks the territorial jurisdiction to entertain the present petition.

12. In view of the above conclusions, it is not necessary to go into the other controversies involved in this petition. On the short ground of lack of territorial jurisdiction I am inclined to reject this petition.

13. In the result the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas